

REMARKS

Applicant appreciates the Examiner's thorough review of the application. Reconsideration and allowance of all claims are requested.

Currently examined claims include claims 9 - 18. Claims 1 - 8 and 19 - 34 have been withdrawn. Claims 9 - 18 stand rejected.

Claims 9 - 18 are patentable under 35 U.S.C. 101.

The Office Action states that claims 9 - 18 were not drawn to patentable subject matter. Applicant respectfully disagrees. Applicant has amended the claims to avoid lengthy arguments on this issue with the understanding that such claims, as previously written, may be pursued in the future. Claims 9 - 18 are drawn to statutory subject matter and are patentable under 35 U.S.C. 101.

As presently drawn, the claims address a method of determining the presence of a substance in a sample assay. Claim 9 has been amended to more clearly demonstrate that the invention relates to patentable subject matter. Claim 9 now reads that the method (1) describes a sample assay, and (2) displays the result, which both clearly fall within the statutory subject matter of 35 U.S.C. 101.

Therefore, the claims are patentable under 35 U.S.C. 101. Applicant respectfully requests withdrawal of the rejection.

Claims 9 - 18 are patentable under 35 U.S.C. 112, second paragraph.

Claims 9 - 18 particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 9 - 18 are patentable under 35 U.S.C. 112, second paragraph.

Claims 9 - 18 have been amended to define the "indicating" as "displaying to a user". No new matter has been added by the amendments in this response. The amendment is supported by the original specification and drawings. For example, see Figure 1 and paragraph 00045.

Therefore, claims 9 - 18 are patentable under 35 U.S.C. 112, second paragraph, and Applicant respectively requests that the Examiner withdraw the rejection.

Claims 9 - 18 are patentable under 35 U.S.C. 102(b) over Yang et al. (U.S. 6,216,049).

Claims 9 - 18 are patentable over Yang et al ("Yang"). Reconsideration and allowance are requested.

Applicant respectfully disagrees with the statements in the Office Action that reference claims 1 and 3 in Yang explicitly teach the limitations of claim 9. The previous amendments distinguish claim 9 from the teachings in Yang because claim 9 initially requires "assigning respective numerical values to each of the plurality of data values" before the initial and subsequent correcting and comparing steps. In the present invention, the "subsequently correcting" and "subsequently comparing" steps use the "initially correcting" and "initially comparing" steps as input. The "subsequently correcting" and "subsequently comparing" steps do not use the "assigning respective numerical values to each of the plurality of data values" step as input.

Reference claim 1 in Yang teaches "assigning a respective numerical value to each of said data values" followed by a comparing and controlling step. Reference claim 1 of Yang teaches an initial comparing, but does not teach subsequent correcting and comparing.

Reference claim 3 in Yang teaches that "said assigning step comprises" (emphasis added) arranging the data values in a time sequence, comparing the magnitude of data values to adjacent data values, and adjusting the magnitude of the data values subsequent to step data values. Reference claim 3 of Yang describes the initial assignment of numerical values to the data values, but does not teach subsequent correcting and comparing initially corrected respective numerical values.

Applicant's invention uses a two-stage iteration for correction and comparison. Yang teaches a one-stage comparison. In the Applicant's invention, the assigned numerical values are corrected, compared to a threshold value, corrected again, and compared again before determining

whether the sample assay contains a predetermined characteristic. Yang does not teach a subsequent correction and comparison.

Therefore, independent claim 9 is patentable over Yang. Dependent claims 10 - 18 add further patentable features to the patentable features of independent claim 9 and are patentable over Yang. Applicant respectfully requests that the Examiner withdraw the rejection.

Claims 9 - 11, 13 and 17 - 18 are patentable under 35 U.S.C. 102(b) over Kurnik et al. (*Sensors and Actuators B*, 1999, vol. 60, p. 19 - 26).

Claims 9 - 11, 13 and 17 - 18 are patentable over Kurnik under 35 U.S.C. 102(b).

Reconsideration and allowance are requested.

Fig. 4 of Kurnik does not disclose "assigning respective numerical values to each of the plurality of data values". To the contrary, Fig. 4 is merely a plot of values from an algorithm. The Office Action at page 6 states that Kurnik uses a Mixture of Experts (MOE) algorithm for predicting numerical values for raw data obtained over time and assigning them to values on a graph [Fig. 4].<sup>1</sup> However, Fig. 4 is merely a comparison of the MOE results and reference measurements for the purposes of determining whether their method disclosed in the article was effective. See Kurnik page 23, column 2.

Fig. 4 is not related to the MOE method of Kurnik, but merely shows a correlation between the MOE method and reference measurements. Plotting results of an algorithm on a graph is not "assigning respective numerical values to each of the plurality of data values" as found in claim 9, which happens before any correcting, comparing or other processing of data values. Kurnik does not teach this initial assigning step in Fig. 4 or elsewhere. No assignment of values occurs before the application of the MOE algorithm in Kurnik as required by claim 9.

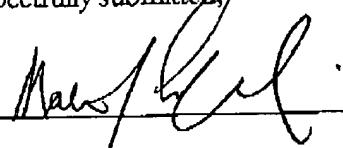
Kurnik does not disclose "initially assigning respective numerical values to each of the plurality of data values". Therefore, independent claim 9 is patentable over Kurnik. Dependent claims 10, 11, 13 and 17 - 18 add further patentable features to the patentable features of independent claim 9 and are patentable over Kurnik. Applicant respectfully requests that the Examiner withdraw the rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

If there is any fee due in connection with the filing of this Amendment, please charge the fee to our Deposit Account No. 50-2228, under Order No. 0220187.0150PTUS from which the undersigned is authorized to draw.

Respectfully submitted,

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